IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
Chapter VIII, Rule 32(2) (b)
Description of case

Date of decision: 17.12.2007

Criminal Appeal No. 585 of 2001
(Old No. 473 of 1991)

A.F.R. (Approved for Reporting)
Not approved for Reporting

(Initial of Judge)

Date: 17.12.2007

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 585 of 2001
(Old No. 473 of 1991)

Dewan Singh
S/o Than Singh
R/o Village Kula
P.s. Rudrapur
District Nainital. ….Appellant.

Versus

State of U.P. …..Respondent.

Shri Pankaj Purohit, learned Amicus Curiae for the appellant.
Shri Amit Bhatt, learned A.G.A. for the State.

Coram: Hon'ble Prafulla C. Pant, J.
Hon'ble Dharam Veer, J.

Oral:- Hon'ble Prafulla C. Pant, J.

This appeal , preferred under Section 374 (2) of Code of Criminal Procedure, 1973, is directed against the judgment and order dated 05.03.1991, passed by IIIrd Additional Sessions Judge, Nainital, in Sessions Trial No. 156 of 1990, whereby appellant Dewan Singh, has been convicted under Section 302 and under Section 307 of Indian Penal Code, 1860 (for brevity herein after referred as I.P.C.) and sentenced to undergo imprisonment for life (under section 302 I.P.C.) and rigorous imprisonment for a period of 7 years (under Section 307 I.P.C.).

2. Heard Shri Pankaj Purohit, learned Amicus Curiae, for the appellant and Shri Amit Bhatt, learned Additional Government Advocate for the State.

3. Prosecution story in brief is that on 08.03.1990, Pratap Singh (P.W.1) had gone along with his younger brother Bir Singh (deceased) to Gularbhoj Bazar. On his return from the market at about 6:00 p.m., he stopped in Village Marghatnamajra Bhoj and watched a movie on television in the house of Kishan Singh Kangri (D.W. 1). Pan Singh (P.W. 2- injured) and accused Dewan Singh (present appellant) were also watching movie in said house. While watching movie, Bar Singh (deceased) had a quarrel with Dewan Singh (appellant). But with the intervention of complainant- Pratap Singh and witness Pan Singh, the quarrel subsided down. Thereafter, the complainant Pratap Singh along with his brother Bir Singh, started returning on bicycle on their way to Village Matkota. Pan Singh was following them as he too belonged to Matkota. At about 8:30 p.m. when the two reached near Village Kulla, accused Dewan Singh came on his bicycle and stopped the two. Exclaiming that he would take revenge for quarrelling with him, he (Dewan Singh) took out a knife and gave a blow in the abdomen of Bir Singh (deceased). Pan Singh (P.W. 1) when attempted to save Bir Singh (deceased), accused Dewan Singh gave a knife blow in the abdomen of Pan Singh also and left his cycle and ran away from the place of incident. Bir Singh after going ahead to some distance, fell down and succumbed to the injuries. Report of the incident was lodged by Pratap Singh (P.W.

1) at about 11:15 p.m. on 08.03.1990 with the outpost Dineshpur (within the limits of P.S. Rudrapur). The entry of said First Information Report (Ext. A-1) was made in the general diary and crime No. 14 of 1990, was registered against accused Dewan Singh, relating to offence punishable under Section 302 and one punishable under Section 307 I.P.C. The crime was investigated by Sub-Inspector Vinod Kumar (P.W. 5), who went to the spot and at about 1:30 a.m. on 09.03.1990, after taking the dead body of Bir Singh into possession, prepared inquest report (Ext. A-6). The Investigating Officer further got prepared police form No. 13 (Ext. A-7), sketch of the dead boy (Ext. A-8), and letter to the Chief Medical Officer (Ext. A-9), for post mortem examination. He also prepared site plan (Ext. A-11). The Investigating Officer took simple soil and blood stained soil from the spot and prepared memorandum (Ext. A-12). The cycle left by the accused at the spot is also taken into possession by Investigating Officer and report (Ext. A-13) was also prepared. During investigation, the Investigating Officer recovered a knife, used in the crime on 21.03.1990 and prepared memorandum (Ext. A-14). Meanwhile injuries on the person of Pan Singh were examined on 09.03.1990 at Primary Health Centre, Dineshpur, by Dr. P.S. Bisht (P.W. 4) and post mortem was conducted on the dead body of Bir Singh on said date (09.03.1990) at 2:30 p.m. by Dr. A.S. Sawn (P.W. 3). The Medical Officer, who conducted autopsy after recording ante mortem injuries, opined that the deceased died on account of shock and haemorrhage due to ante mortem injuries. After

completion of the investigation, the Investigating Officer, submitted chargesheet (Ext. A-17) before the Magistrate concerned.

4. The Magistrate, on receipt of charge sheet, after giving necessary copies, as required under Section 207 Cr.P.C. to the accused, committed the case to the Court of Sessions for trial. Learned Sessions Judge appears to have transferred the case initially to the court of IVth Additional Sessions Judge, Nainital (earlier Rudrapur was part of District Nainital), who after hearing the parties, framed charge on 23.07.1990 of offence punishable under Section 302 I.P.C. and that of offence punishable under Section 307 I.P.C. against accused Dewan Singh, who pleaded not guilty and claimed to be tried. On this, the prosecution got examined P.W. 1 Pratap Singh (complainant-eye witness), P.W. 2 Pan Singh (injured eye witness), P.W. 3 Dr. A.S. Sawn (who conducted autopsy on the dead body of Bir Singh), P.W. 4 Dr. P.S. Bisht (who recorded the injuries found on the person of Pan Singh), and P.W. 5 Vinod Kumar (the Investigating Oficer). The oral and documentary evidence was put to the accused under Section 313 of Cr.P.C. to which though the accused admitted having witnessed movie in the house of Kishan Singh but denied rest of the evidence adduced against him. Lastly, he pleaded that he had been falsely implicated due to enmity. In the defence, D.W. 1 Kishan Singh was got examined. After hearing the parties, the trial court found Dewan Singh guilty of offence of committing murder of Bir Singh and that of attempting to commit murder of

Pan Singh, punishable under Section 302 I.P.C. and 307 I.P.C. respectively. Thereafter, the trial court heard on sentence and sentenced Dewan Singh to imprisonment for life under Section 302 I.P.C. and rigorous imprisonment for a period of 7 years under Section 307 I.P.C. Aggrieved by said judgment and order dated 05.03.1991, passed by the trial court (IIIrd Additional Sessions Judge, Nainital), this appeal was filed before Allahabad High Court on 19.03.1991, where it was admitted. The appeal is received by this Court under Section 35 of U.P. Reogranisation Act, 2000, for its disposal.

5. Before further discussions, it is pertinent to mention here the ante mortem injuries, recorded by P.W. 3 Dr. A.S. Sawn, who prepared the autopsy report (Ext. A-3). The ante mortem injuries found on the dead body of Bir Singh, are as under:-

"1. One abrasion over left cheek bone 1cm X 1cm in area, 1 cm below the lower eyelid of left eye.

1. One stab wound over the left side of central abdomen (left lumbar area) 1.5cm X 1cm X cavity deep, 8 cm away and leftwards of umbilicus, 20 cm below the left nipple and 10 cms above and inwards to the ant. Sup. Iliac spine (waist). Wound margins are inverted,

clean and regular. Loop of intestines protruding out from the wound along with the blood clots."

On internal examination, the Medical Officer (P.W. 3-A.S. Sawn) has observed that in peritoneum, lacerated stab injuries were found. He further observed that cavity of abdomen was full of coagulated blood about one litre in volume. Spleen was also found lacerated. The medical officer, as mentioned above, had opined that the cause of death of the deceased was shock and haemorrhage due to ante mortem injuries.

6. It is also pertinent to mention here the injuries found on the person of Pan Singh (injured eye-witness) by P.W. 4 Dr. P.S. Bisht, when he examined him on 09.03.1990 at about 1:50 a.m. at Primary Health Centre, Dineshpur. Where after he (P.W. 4) prepared a report (Ext. A-4). Said report discloses following injury found on the person of Pan Singh :-

"1. Incised wound 4.5cm X 1cm X ½ cm on over left side of abdomen (bleeding present), 17cm away from umbilicus. Injury is simple and caused by sharp weapon. Duration of injury- fresh."

P.W. 4, Dr. P.S. Bisht, in his examination while proving the aforesaid document, has stated that aforesaid injury could have been caused to the injured on 08.03.1990 at about 8:30 p.m.

7. P.W. 2 Pan Singh, who is injured eye-witness has stated on oath that on 08.03.1990, at about 6:00 p.m. after returning from Gular Bhoj Bazar, he stopped in the house of Kishan Kangri and watched a movie on television. The witness further states that there Bir Singh (deceased) and Pratap Singh (complainant) were also watching movie. While watching movie, Bir Singh had a quarrel with Dewan Singh, who was also there in the house of Kishan Kangri. After that incident, when Pratap Singh, along with Bir Singh was going on a bicycle to their Village Matkota, this witness followed them as he also belonged to same Village. At about 8:30 p.m. when they reached near Village Kulla, accused Dewan Singh who came from behind his bicycle, stopped them and gave blow with the knife in the abdomen of Bir Singh. The witness further states that when he intervened to save Bir Singh, accused (Dewan Singh) inflicted knife injury in his abdomen. The witness further states that he wanted to apprehend the accused but he ran away from the scene after giving a cut with his teeth on the finger of Pan Singh. The witness further states that Bir Singh after going ahead to some distance, fell down and succumbed to the injuries. The statement of this witness gets corroboration from the injury report, quoted above, as stated by P.W. 4 Dr. P.S. Bisht. The presence of this witness is not doubtful at the scene of occurrence.

8. Statement of P.W. 2 Pan Singh gets full corroboration from the evidence given by P.W. 1 Pratap Singh, who is also eye witness. This witness has

corroborated that at about 6:00 p.m. on the date of incident, deceased, complainant and injured when watching movie in the house of Kishan Kangri, there had been quarrel whereafter Dewan Singh intercepted deceased Bir Singh at about 8:30 p.m. on his way to Village Matkota and caused knife injury in his abdomen. This witness has further stated that deceased was sitting on carrier of his bicycle and both were going on the same bicycle when the accused came, and stopped them before committing murder of the deceased. P.W. 1 Pratap Singh has further corroborated that Pan Singh, who was following them intervened but he was also given a knife blow in his abdomen by the accused Dewan Singh (appellant). This witness has proved First Information Report (Ext. A-1), which he got lodged with out post Dineshpur (P.S. Rudrapur). Statement of this witness is natural and creates no doubt as to the commission of crime by accused Dewan Singh.

9. P.W. 5 Vinod Kumar, the Investigating Officer, has stated that at 11:15 p.m. on 08.03.1990, the First Information Report (Ext. A-1) of the incident was lodged. An entry of said lodging was made in the General Diary at report No. 17. The witness further states that he investigated the crime and took the dead body into possession and prepared inquest report (Ext. A-6) and other necessary papers. He further states that he got sent the dead body of Bir Singh in a sealed condition for post mortem examination. The witness has stated that during investigation, he took the bicycle of Dewan Singh, left by him at the spot, in his possession

and prepared memorandum (Ext. A-13). He also prepared memorandum relating to taking of simple soil and blood stained soil from the spot. P.W. 5 Vinod Kumar further sated that he interrogated the witnesses and after completion of the investigation, submitted the charge sheet to the court concerned.

10. The distance between the police station and place of incident is about 7 Kms. Considering said distance, the First Information Report, lodged by Pratap Singh, appears to be a prompt one, as the same has been lodged within 2½ hours of the incident.

11. Learned counsel for the appellant argued that there was no motive of commission of crime on the part of the accused. Having gone through the statements of the witnesses of fact, namely P.W. 1 Pratap Singh and P.W. 2 Pan Singh, we are of the view that prosecution has sufficiently shown the reason why the accused was prompted to commit murder of Bir Singh. It is also most natural that when Pan Singh, who intervened and tried to save Bir Singh, accused Dewan Singh gave a blow with knife in the abdomen of Pan Singh, who too got injured. Otherwise also, where there is direct eye witness account available, motive loses its importance.

12. Second submission, advanced on behalf of the appellant is that there is no mention of the light in the First Information Report. Having considered said submission we are of the view that had the accused not known to the injured and other witnesses, it could had

been of some help to the appellant but in the present case they were known to each other and it was not difficult for the injured and complainant to identify the aggressor. Apart from this, P.W. 1 Pratap Singh, has clearly stated that near the crossing there was electric pole and there was light from a nearby flour mill. Merely for the reason that the source of light was not mentioned in the First Information Report it does not make the prosecution story doubtful particularly in the circumstances of the present case.

13. Thirdly, it is argued that spleen of the deceased was found to be swollen one. Had the spleen of the deceased not found to be swollen one, he could not have died and as such, at the most, if causing of the injury by the appellant is treated proved, it makes out a case punishable under Section 304 Part II and not under Section 302 I.P.C. Having considered the nature of injury on vital part of deceased, mentioned in the post mortem examination report and also the injury caused to another witness Pan Singh, we are of the view that it is a simple case of murder of Bir Singh and also that of attempting to commit murder of Pan Singh.

14. Lastly, it is contended that D.W. 1 Kishan Singh, has denied that there had been any quarrel in his house. As far as the presence of the accused in the house of Kishan Singh soon before the incident is concerned, that is admitted to him, as is clear from his reply to question No. 1 put to him under Section 313 Cr.P.C. Merely for the reason that Kishan Singh has stated that no quarrel

took place in his presence does not create any reasonable doubt in the prosecution story in view of strong evidence of the incident, which followed after the quarrel.

15. For the reasons, as discussed above, the appeal is liable to be dismissed. The same is dismissed. Send the lower court record back to the court concerned, who shall ensure that the appellant is taken into custody to make him to serve out the sentence, awarded to him. He is on bail. His bail is cancelled.

(Dharam Veer, J.) **(Prafulla C. Pant, J.)**

Dt: 17.12.2007

Sweta